



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Hill Co.  
Honorable A. J. Bryan, Jr.  
Criminal District Attorney  
Hillsboro, Texas

Dear Sir:

Opinion No. G-2179  
Re: Is a county liable for  
hospitalization of any  
transient if he is a  
pauper and the county  
has no public hospital?  
And related question.

Your letter of April 4, 1940, requesting the  
opinion of this department on the questions as are herein  
stated, has been received.

We quote from your letter as follows:

"A transient person, who was evidently  
a pauper, was riding a freight train in Hill  
County. The train had a wreck and the man  
was injured and taken to the nearest rail-  
road station. Of course the railroad was  
not liable for his injuries especially since  
he was a hobo. A group of local citizens  
called the county judge by telephone and  
asked him would the county hospitalize the  
man. The judge answered that the county  
would do so and instructed the citizens to  
bring the man to Hillsboro to a private  
hospital, there being no public hospital in  
the county. The man was treated for some  
14 or 15 days and the bill was submitted to  
the county for payment. The County Auditor  
does not know whether to pass the bill for  
payment or not since the party was a tran-  
sient, and the hospital was not a public  
hospital. The hospital bill was in the sum  
of \$50.00. Hill county has a county health

Honorable A. J. Bryan, Jr., Page 2

officer but his duties do not include care for paupers. In April 1939 the Commissioner's court of Hill county gave the County Judge authority to bind the county up to \$25.00 for hospitalization of paupers until a better arrangement could be worked out. No new orders have been passed by the Court but the County Judge states that the Commissioners have given him authority, verbally, to bind the county for hospitalization of paupers not to exceed a certain amount per day in lieu of the order that is of record.

Question:

"Is the county liable for the bill?"

We restate your second question as follows: Is a county liable for hospitalization of any transient if he is a pauper and the county has no public hospital?

We quote the order of the Commissioners' Court bearing date April 24, 1939, as follows:

"Order No. 192 April 24, 1939

On Motion of Commissioner Taylor and seconded by Commissioner Wallace, it is ordered that the County Judge is directed and authorized to expend up to \$25.00 for charity patients until a satisfactory plan may be worked out for care of these. This order to become effective of this date.

"Commissioners Taylor, Watson, and Wallace present and voting 'aye' Commissioner Cliett absent.

Judge Cowley, presiding."

Sections 11 and 12 of Article 2351, Vernon's Annotated Civil Statutes, reads as follows:

"11. Provide for the support of paupers and such idiots and lunatics as cannot be admitted into the lunatic asylum, residents of their county, who are unable to support themselves. By the term resident as used herein, is meant a person who has been a bona fide inhabitant of the county not less than six months and of the State not less than one

Honorable A. J. Bryan, Jr., Page 3

year.

"12. Provide for the burial of paupers."

Article 4438, Vernon's Annotated Civil Statutes, reads as follows:

"If there is a regular established public hospital in the county, the commissioners court shall provide for sending the indigent sick of the county to such hospital. If more than one such hospital exists in the county, the indigent patient shall have the right to select which one of them he shall be sent to."

In the case of Willacy County v. Valley Baptist Hospital, et al, 29 S. W. (2d) 456, the facts were substantially as follows:

On a certain night in July, 1929, a person by the name of Rafael Barbosa, a resident of Willacy County, was struck by an automobile, and seriously injured. He lay wounded by the roadside the remainder of the night. The next morning his condition was discovered by the Sheriff of Willacy County, who in turn called the County Judge, who directed that all necessary medical aid be given to the injured man, stating that the county would pay the expenses. The sheriff thereupon called Dr. McCann, a local physician, who upon examination of the injured man concluded that an operation was necessary. There was no hospital in Willacy County and the sheriff, accompanied by Dr. McCann, rushed Barbosa to the Valley Baptist Hospital at Harlingen, in Cameron County, where another physician, was called in and performed an operation. A few days later Barbosa died as a result of his injuries. Afterward the two physicians and the hospital filed claims against the county for thirty dollars, one hundred and fifty dollars, and eighty-nine dollars, respectively, as their fees for the services rendered by them to Barbosa. The county commissioners' court rejected these

Honorable A. J. Bryan, Jr., Page 4

claims, and the claimants each filed suit against Willacy County, in a justice of the peace court. The three suits were consolidated and judgment was rendered in favor of the plaintiffs for the amount of their respective claims. On appeal to the County Court a like judgment was rendered upon a directed verdict, and Willacy County appealed. The judgment was based upon the assumption that Barbosa was a pauper and therefore such a charge upon the county as to render it the duty of the latter to furnish him the services for which the suit was brought; and that the County Judge was clothed with authority to bind the county with his agreement to pay for such services, although it was considered that the commissioners' court as a body, or the commissioners individually, had taken no action to declare Barbosa a pauper or to authorize the County Judge to so bind them, and no such matters had ever been presented to them. Willacy County, with but a little population, had no public or private hospital, such as are being operated in counties of large population.

The judgment of the County Court was reversed and rendered.

We quote from the above mentioned case as follows:

"The powers and duties of county commissioners' courts, and the obligations of the counties to paupers are fixed by statute, and cannot be enlarged upon by unnecessary implication. These powers and duties, in so far as applicable here are defined in and restricted by the provisions of Articles 2351 and 4438, Revised Statutes, 1925. In Article 2351 it is provided that each commissioners' court shall (subdivision 11) 'provide for the support of paupers \* \* \* residents of their county, who are unable to support themselves', and (subdivision 12) 'for the burial of paupers'. In Article 4438 it is provided that 'if there is a regular established public hospital in the county, the commissioners' court shall provide for sending the indigent sick \* \* \* to such hospital'. In the latter provision the duty and the authority of the commissioners' court to send the indigent sick to hospitals is limited to public hospitals

Honorable A. J. Bryan, Jr., Page 5

within the county, which provision, by necessary implication excludes any duty or authority to send such persons to private hospitals, or to public hospitals without the county. Even if Barbosa was within the class defined as 'indigent sick,' the commissioners' court as a body, muchless the county judge acting singularly, was under no duty, and was denied the authority to send Barbosa to a hospital, either public or private, outside the county.

\* \* \*. Under the provisions of Article 4438, the county was under no duty to send Barbosa to any hospital, there being no public hospital in the county, and under the implied restrictions of this provision it is doubtful if the county could be bound by the commissioners' court, certainly not otherwise, to send him to a hospital without the county, at public expense.

\* \* \*. \*

In view of the foregoing authorities and the above stated facts, questions Nos. 1 and 2, above quoted, are respectfully answered in the negative.

Trusting the the foregoing fully answers your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

*Ardell Williams*

By

Ardell Williams  
Assistant

AW:RS

APPROVED APR 15, 1940

*George B. Mason*

ATTORNEY GENERAL OF TEXAS

